



# **Aboriginal Heritage Protection in Goldfields-Esperance**

## **Information for Explorers and Miners**

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## OVERVIEW

Across Western Australia, sites of heritage and cultural significance to Aboriginal people are protected by the *Aboriginal Heritage Act (1972)*.

Section 17 of the Act states that it is:

*“an offence for any person to excavate, destroy, damage, conceal or in any way alter any ‘Aboriginal site’ without authorisation from the Registrar of Aboriginal Sites or the consent of the Minister for Aboriginal Affairs”.*

Anybody intending to undertake mineral exploration or mining development in the Goldfields-Esperance region has a statutory obligation to observe the requirements of this State law. The Act applies to all Aboriginal sites, whether registered or not (it is recognised that there are many very important Aboriginal sites that are yet to be brought to the attention of the Registrar of Aboriginal Sites).

Substantial penalties apply in the event that Aboriginal heritage is damaged or destroyed in contravention of the Act. See page 6

Additional obligations for miners or explorers (proponents) arise when they sign, or are required to sign, the State Government-endorsed Goldfields Regional Standard Heritage Agreement (GRSHA). See page 5

### Key points

The following are key points that anyone contemplating exploration or mining activities in the Goldfields-Esperance region should be aware of:

- Individuals and companies have a statutory obligation to protect Aboriginal heritage. This is true of all Aboriginal sites, whether registered or not.
- The surest way to avoid impacting on Aboriginal sites is to commission a heritage survey. Surveys should include input from the right Aboriginal people on whose country the activity is proposed. In some cases surveys may not be required. Page 3
- The Goldfields Land and Sea Council (GLSC) is very well placed to assist proponents with the prompt identification of the appropriate Aboriginal people for areas of country and in organising heritage surveys.

The GLSC has more than 20 years experience working with and representing indigenous people from across the Goldfields-Esperance region. It has extensive knowledge of the people and Aboriginal heritage issues. See pages 4–5

- The *Aboriginal Heritage Act (1972)* lays down the procedures that proponents need to follow if Aboriginal sites are identified during a survey. See page 5
- It is recommended that proponents and Aboriginal people enter into heritage agreements to ensure there are clear guidelines for development activities and protection of important sites.

## **CONDUCTING HERITAGE SURVEYS**

To minimise the chance of impacting Aboriginal sites (defined in sections 5(a) and 5(b) of the Act), a proponent should conduct a heritage survey in collaboration with recognised, bona fide Aboriginal people from the area (consultants).

The consultants should be people recognized by the GLSC and the native title claim group and local Aboriginal community as the appropriate people to speak for 'country' where the work will take place.

Failure to conduct a satisfactory heritage survey (e.g. the wrong people were represented on the survey team) could result in the proponent failing to meet their obligations under the Act. This could lead to prosecution or the proponent having to redo the survey, incurring unnecessary delay and additional cost.

### ***How the GLSC can assist***

The GLSC recognises that proponents need to proceed with exploration and/or mining development activities as soon as practicable. It also acknowledges that most proponents want good working relationships with the local Aboriginal people.

Unfortunately, proponents may not always be aware of their statutory obligations under the Act or the GRSHA, which can cause problems.

The GLSC can assist with ensuring problem-free surveys in the following ways:

1. The GLSC is dealing with heritage surveys and Aboriginal people's approval of mining and exploration tenement applications on a daily basis. It can provide expert advice and assistance so that proponents understand and meet their obligations.
2. With over 20 years experience as a Native Title Representative Body and representing Aboriginal people in the Federal Court, the GLSC has gathered substantial ethnographic, historical and archaeological data for the area.

Of particular value with heritage surveys is the data that GLSC has gathered from Aboriginal informants and its knowledge about which individuals and groups speak for which parts of 'country'.

3. Proponents who work in conjunction with the GLSC benefit from sharing the organisation's unparalleled understanding of how best to approach heritage protection within the Goldfields-Esperance region.
4. The GLSC and indigenous people from Goldfields-Esperance share with proponents the desire for prompt, orderly establishment of development projects.

No-one wants half-baked surveys that have consulted with the wrong people, requiring that proponents have to re-do them.

5. GLSC heritage surveys provide data that is reliable and consistent, ensuring that proponents meet all of their statutory obligations under the Act.
  - Confidentiality is respected.
  - The right people are consulted. The Aboriginal informants for surveys are people selected by the relevant cultural group, and recognised as knowing and being able to speak about the area being surveyed;
  - Where survey areas involve more than one group, the GLSC will endeavour to provide a combined survey of the people involved to minimise costs;
  - Sometimes Aboriginal heritage issues arise that are secret to men or to women. The GLSC employs both male and female anthropologists to address these situations;
  - Anthropologists employed by GLSC (staff or contract) have qualifications from approved tertiary institutions;
  - GLSC survey and reporting standards are endorsed by the Western Australian Government Departments of Indigenous Affairs (DIA) and Industry and Resources (DOIR).

### ***Heritage survey arrangements***

1. In most cases, heritage surveys first require establishment of a heritage agreement between the proponent and the native title claim group. In some cases, the GLSC is authorised to sign the agreement on behalf of the relevant traditional land owners.
2. Once an agreement has been signed, a Heritage Officer will usually contact the proponent to request a detailed 'program of works', which allows proper arrangements to be made with regard people, place, time, costs etc.
3. Once the program of works and costs are agreed by all parties, the GLSC will facilitate all arrangements and conduct the survey.

### ***The Goldfields Regional Standard Heritage Agreement***

The Goldfields Regional Standard Heritage Agreement (GRSHA) is a special agreement template that has been approved by the State Government. The GRSHA allows the fast-tracking of tenement approvals, in return for advance undertakings from proponents to conduct heritage surveys for future ground-breaking work within the tenement area.

The GRSHA provides surety for both proponents and Aboriginal people. It requires that heritage surveys be conducted, unless:

- The proposed works are 'low impact', as defined in the GRSHA e.g. field mapping, reconnaissance in light vehicles etc; or
- Surveys are exempt under Clause 4.2 of the GRSHA.

## ***What if an Aboriginal site is identified?***

If a heritage survey identifies an Aboriginal site (generally under Section 5 of the Act) then the proponent can either:

- Agree to not 'disturb' the area in question, or
- Make an application under Section 18 of the Act for approval to 'disturb' an Aboriginal site.

Applications to disturb sites are first assessed by the Aboriginal Cultural Materials Committee (ACMC), which then makes a recommendation to the Minister for Indigenous Affairs as to whether consent should be granted, and if so, under what conditions.

Section 18 applications require more information than a standard heritage report would normally provide.

Where Aboriginal sites have been identified, the GLSC prefers that proponents negotiate with the relevant native title group ways for protecting or at least minimising the impact to the sites.

Avoiding Section 18 applications through negotiation is far less costly and disruptive, helping ensure harmonious ongoing relationships between proponents and their intended neighbours in the local Aboriginal community.

## ***Penalties***

Penalties were recently substantially increased for offences under the *Aboriginal Heritage Act (1972)*.

- Convictions (for first offence)
  - Individual           \$20,000 fine. Daily penalty of \$400 and/or nine months imprisonment.
  - Company            Penalty of \$50,000. Daily penalty of \$1000.
- Subsequent offences: Individual \$40,000; Company \$100,000.

## **TYPES OF SURVEYS**

The most common heritage agreement used by proponents for ensuring protection of Aboriginal heritage from activities on their tenements is the Goldfields Regional Standard Heritage Agreement (GRSHA).

Section 3.2 of the GRSHA gives proponents the choice of four different types of heritage surveys:

1. Work Program Clearance
2. Work Area Program
3. Site Identification Survey
4. Fit-for-Purpose Survey.

Key factors influencing the choice of survey type would be:

- the needs of the project and the level of professional advice that the proponent requires, and
- the degree to which the traditional land owners are prepared to divulge their cultural information (a lot of information is confidential to family groups and groups within families).

With the increasing role of the GLSC in facilitating heritage surveys, the time taken to complete surveys has substantially decreased. The time it takes is largely dependent on the adequacy of information provided by the proponent's 'work program', and the speed with which costings, sign-off on agreements and survey representatives are provided.

### ***Work Program Clearance Survey***

The Work Program Clearance model is generally the most convenient and suitable survey for the Goldfields. It delivers to proponents the 'informed consent' of claimants for use of their land, including agreed exploration working methods.

The aim of a Work Program Clearance is to 'clear' a specific work program that details the exact locations of ground-disturbing activities (e.g. drill holes, access tracks, work camp areas etc.).

These surveys are best suited to exploration work, which does not involve the intensive ground disturbance that other projects, such as mining, entail.

A work program clearance does not clear the entire tenement. It only considers areas identified in the 'work program' supplied to the anthropologist and indigenous survey team.

It is important that a proponent representative attend heritage surveys to fully explain the proposed works and promptly answer any questions that team members may have.

Having a representative attend can significantly speed up the process. For example, if a cultural site is located across a proposed access track, the survey team could liaise with

the representative, there and then, to determine a suitable detour and amend the work program accordingly (often, changes of only short distances are needed to safeguard areas of concern). At the same time the new GPS location, area flagged and maps etc. could be updated whilst on the survey.

On Work Program Clearance surveys, the traditional land owners retain the right to withhold cultural information, other than that required to indicate which areas of the work program are cleared or not.

Recording of information is limited and the heritage report will not contain any culturally sensitive material, just the basic information needed to indicate whether or not the work program may proceed, in what areas and under what conditions (if required).

#### Note

- This type of survey is not designed to comply with Section 18 notices, as per the *Aboriginal Heritage Act 1972*.

### **Work Area Clearance Survey**

The aim of this model is to consider heritage clearances for large areas of tenements that are proposed for development or extensive drill programs. It can be used to clear work camps, areas of intensified drilling, borrow pits etc, where detailed survey work is not required.

A representative of the proponent must be present, with the authority to discuss alternative locations for work areas, buildings etc, or the setting aside of buffer zones and erection of fences, bollarding, signage etc. for protection of cultural sites.

In cooperation with the proponent's representative, all suggested changes are recorded using maps, GPS coordinates etc. The changes can only be seen as preliminary recommendations, as the indigenous survey team will need to report back to the native title claim group, which has the sole authority for approving heritage clearances under this model.

As with the Work Program Clearance model, with Work Area Clearance surveys traditional owners also retain the right to withhold cultural information other than that necessary to indicate which areas of the work program are cleared, and those which are not. Recording is limited, and the heritage report may include conditions that must be met before approval is granted.

#### Note

- This type of survey is not designed to comply with Section 18 notices, as per the *Aboriginal Heritage Act 1972*.
- While this model aims to avoid sites, it should not be confused with 'site avoidance' surveys as understood by the Department of Indigenous Affairs, which provide more extensive recording for proponents.

- Because of the more extensive nature of these survey types, it is recommended that both an Anthropologist and Archaeologist are involved to ensure all of the Proponents obligations are met.

## ***Site Identification Survey***

Site Identification Surveys record any sites, cultural features or places of special cultural and/or historic interest.

This model best suits proponents who are hoping to do large-scale mining or construction/development, or for small areas that are known to contain areas of cultural significance or previously recorded sites, such as those found at a 'clearance' level.

The recording is very detailed and high standard, meeting the requirements of Section 18 notices under the *Aboriginal Heritage Act 1972*.

It provides statements of significance (that is, detailed evaluation of sites that explain the importance of these sites to the Traditional owners), while at the same time recording other relevant cultural information and comments in regard to the survey area.

Some of the information will almost certainly be in a 'closed' format (accessible only where sworn privilege is granted or may be gender restricted, to protect culturally sensitive material.

As these surveys are very detailed and require prior approval from a meeting of the full native title claim group, they generally take longer to confirm and complete.

Because sensitive cultural information is involved, proponent representatives should be prepared to be asked to stand aside from the indigenous survey team when some matters are discussed.

## ***Fit-for-Purpose Survey***

A Fit-for-Purpose survey is an amalgamation of all survey types. It is always case/situation specific.

It covers situations where simultaneous clearances for a specific work program and a work area are required. For example, a series of drill lines (work program) and an associated site office (work area).

This model has the ability to combine the other survey models into the one survey to ensure that the Proponent has the right level of clearance on any project.

## **FURTHER INFORMATION**

For more information on Aboriginal heritage issues in the Goldfields, or for assistance with organising a heritage survey, please contact staff at the Goldfields Land and Sea Council:

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